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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

NO. 259

THE WIEMAN AND WARD COMPANY, Petitioner

v.

CITY OF PITTSBURGH and JAMES P. KIRK, Treasurer

and

THE WIEMAN AND WARD COMPANY, Petitioner

v.

THE SCHOOL DISTRICT OF PITTSBURGH and JAMES P. KIRK, Treasurer

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

In this case the Wieman and Ward Company, petitioner, has asked your Honorable Court to allow certiorari with respect to a decision of the Supreme Court of Pennsylvania holding that respondents' mercantile taxes as applied to petitioner do not constitute an undue burden on interstate commerce. Respondents, the City of Pittsburgh and the School District of Pittsburgh, respectfully submit that the prayer of the Petition for Writ of Certiorari should not be granted for the following reasons:

I. Petitioner Has Failed to Show Sufficient Reasons For Allowance of Writ of Certiorari.

Rule 19 of the Revised Rules of the United States Supreme Court sets forth the character of reasons for the granting of certiorari by this Court. In order to

invoke the discretionary exercise of the power to grant certiorari with respect to a final judgment of the highest appellate court of a State, it should be shown that:

(a) The State Court has decided a Federal question of substance not theretofore determined by this Court; or that

(b) The State Court has decided a Federal question of substance in a way which is probably not in accord with the applicable decisions of this Court.

Respondents propose to demonstrate in this Brief that the questions in issue in this Petition have been heretofore ruled upon by this Court, and that the decision of the Supreme Court of Pennsylvania in *Wieman and Ward Company v. City of Pittsburgh et al.*, 381 Pa. 535, 113 A. 2d 719 (1955), with respect to the applicability of the commerce clause of the Federal Constitution to the taxes imposed by respondents is in accord with the prior decisions of this Court.

II. Nature of Taxes Imposed By Respondents.

It is important preliminarily to describe the nature of the taxes in issue in this case. The taxes are mercantile taxes imposed by the City of Pittsburgh and by the School District of Pittsburgh upon the privilege of doing business in that city. The taxes imposed by the two political subdivisions are identical for the purposes of this case. The taxes are measured by the gross receipts attributable to the taxpayer's business activities within the city. Petitioner, a Pennsylvania corporation with its principal place of business in the City of Pittsburgh, is engaged in the business of wholesale vendor or dealer in coal, coke and pig iron.

The Supreme Court of Pennsylvania has ruled that the mercantile tax is a tax on the privilege of selling goods and merchandise in Pittsburgh: *Puntureri v. Pittsburgh School District,* 359 Pa. 596, 599, 60 A. 2d 42, 43 (1948). Respondents' mercantile taxes are the same as the former Pennsylvania State mercantile tax which the Pennsylvania courts held to be an excise tax upon the privilege of doing business or upon the business of selling or of vending merchandise: *Knisely v. Cotterel,* 196 Pa. 614, 628, 630, 46 Atl. 861, 862, 863 (1900); *Blauner's, Inc. v. Philadelphia,* 330 Pa. 342, 346, 198 Atl. 889, 891, 892 (1938). The courts have emphasized that mercantile taxes are not taxes on sales nor taxes upon property or income.

Respondents' taxes do not fall either on intrastate or interstate business; they are imposed on the privilege of doing business in Pittsburgh and are measured by gross receipts from sales. There is no discrimination between interstate and intrastate selling. If respondents' taxes discriminate against interstate commerce or are an undue burden on interstate commerce, petitioner has failed to prove it in the State courts or allege it in this Petition although the burden of proof rests upon petitioner. A taxpayer claiming immunity from a tax on the basis of the commerce clause has the burden of establishing the exemption: *Norton Co. v. Department of Revenue of Illinois,* 340 U. S. 534, 537 (1951). In *Chicago v. Willett,* 344 U. S. 574, 578 (1953), this Court said:

> "* * * the taxpayer here makes no showing that the tax, though directed at interstate business only, in fact burdens interstate commerce. This is for the taxpayer to show affirmatively and respondent has made no attempt to do so."

The key to determining the constitutionality of respondents' taxes as applied in this case is whether the taxable event, the petitioner's business and selling activities in the City of Pittsburgh, contains sufficient local incidents to support the local taxes. We respectfully submit that in each of the six classes of transactions in issue in this case sufficient local incidents are present to uphold the validity of respondents' taxes, as hereinafter demonstrated.

III. The Decision of the Supreme Court of Pennsylvania Is in Accord With the Decisions of This Court Upholding the Validity of Local Privilege Taxes Measured By Gross Receipts Where Sufficient Local Incidents Are Present, Even Though Transportation Across State Lines Is Involved.

The Supreme Court of Pennsylvania stated in its opinion in this case:

> "* * * although a transaction viewed as a whole may be one in interstate commerce, there may be certain 'intrastate events' or 'local activities' in connection therewith that permit the imposition of a State tax. * * *" 381 Pa. at 541, 113 A.2d at 721.

The Pennsylvania Court cited a number of leading cases decided by this Court in support of this principle: *Western Live Stock v. Bureau of Revenue,* 303 U. S. 250 (1938); *Southern Pacific Co. v. Gallagher,* 306 U. S. 167, 176 (1938); *McGoldrick v. Berwind-White Coal Mining Co.,* 309 U. S. 33, 58 (1940); *International Harvester Co. v. Department of Treasury,* 322 U. S. 340 (1944); *Norton Co. v. Department of Revenue of Illinois,* 340 U. S. 534 (1951).

Complementing the principle that local incidents or activities support local taxes is the repeated assertion of this Court that interstate commerce may be made to pay its own way: *Western Live Stock v. Bureau of Revenue, supra,* at page 254; *Braniff Airways v. Nebraska State Board,* 347 U. S. 590, 598 (1954).

If these principles are applied in the case at bar, it is readily apparent that the challenged taxes are valid.

A. *Transactions between a Pittsburgh seller and Pennsylvania buyers are subject to respondents' mercantile taxes regardless of the source of supply of the products of the sale or their place of delivery (Classes A, B and D).*

The first class of transactions discussed by petitioner in the Argument section of its Petition is the Class A transaction. Class A transactions consist of sales of coal by petitioner to Pittsburgh buyers. The coal is purchased by petitioner from out-of-State mines specified by the buyer and is delivered directly to the buyer's customers out of the State at the request of the buyer. A typical transaction is a sale of coal to the H. C. Frick Coal Company of Pittsburgh for delivery to the latter's customers in Ohio and Indiana.

Class B and Class D transactions are variations of the sales described in Class A. Class B transactions consist of sales of coal by petitioner to Pennsylvania buyers. The coal purchased by petitioner is mined in Pennsylvania and is delivered directly to the buyer's customers outside the State at the request of the buyer. An example of this transaction is a sale of coal to the Cortright Coal Company of Philadelphia for delivery to its customer in New Jersey.

Class D transactions consist of sales of coal by petitioner to Pittsburgh buyers. The coal is purchased by petitioner from out-of-State mines specified by the buyer and is delivered to the buyer or his customers in Pennsylvania. A typical transaction is a sale of coal to the Jones and Laughlin Steel Corporation of Pittsburgh for delivery to its plant in Aliquippa, Pennsylvania.

The validity of mercantile taxes on the privilege of doing business in Pittsburgh, measured by receipts from sales transactions virtually identical with the Class A, B and D transactions in this case, was in issue in a case decided by the Supreme Court of Pennsylvania in 1953: *Keystone Metal Co. v. Pittsburgh,* 374 Pa. 323, 97A. 2d 797, certiorari denied, 346 U. S. 887, petition for rehearing of denial of certiorari denied, 346 U. S. 917 (1953).

The Keystone Metal Company was a Pennsylvania corporation having its place of business in the City of Pittsburgh. The Company was engaged in the business of buying and selling nonferrous metals. In the disputed transactions in the *Keystone* case the Company sold quantities of copper scrap to the Westinghouse Electric Corporation and the National Electric Products Corporation, both Pennsylvania corporations with offices in Pittsburgh. The purchase orders placed with Keystone by Westinghouse and National specified the quantity of scrap described, with a provision that the scrap was to be shipped directly to a smelting and refining company in New Jersey, the latter company not being an affiliate of the buyers. Since Keystone did not itself keep any copper scrap on hand it purchased the scrap from suppliers within and outside Pennsylvania. Keystone's suppliers during the tax period in issue were

located in Ohio, West Virginia, Florida, North Carolina, South Carolina and Missouri, as well as in Pennsylvania. At the request of the buyers the seller had the suppliers ship the scrap directly to the refinery in New Jersey. Most of the scrap was obtained by Keystone from out-of-State suppliers.

The copper scrap shipped in the *Keystone* case obviously moved across state lines. Most of the scrap was never physically present in Pennsylvania. The Pennsylvania Supreme Court held that respondents may measure their mercantile taxes by receipts from these sales made by the Keystone Metal Company. These were sales by a company doing business in Pittsburgh, and the Court held that the mercantile taxes "should be sustained as falling upon local transactions which, even though giving rise to interstate transportation, are sufficiently separate and distinct to admit of State taxation." 374 Pa. at 329, 97 A. 2d at 800.

The Keystone Metal Company petitioned this Court for a writ of certiorari, which was denied: 346 U. S. 887 (1953). Subsequently, the Company petitioned for a rehearing of the order denying the writ of certiorari and this Petition was also denied: 346 U. S. 917 (1953).

We respectfully submit that the petitioner in this case has shown no additional or different grounds for allowance of certiorari than were presented in the *Keystone Metal Company* case, and that, therefore, the Petition in the case at bar should be denied.

In the Petition, as in its argument to the Pennsylvania Supreme Court, petitioner has attempted to distinguish the *Keystone Metal Company* case on the ground that in the Class A transactions in the case at bar the

coal is obtained from out-of-State mines specified by the buyer, whereas in the *Keystone Metal Company* case the copper scrap was obtained outside of Pennsylvania at the discretion or convenience of the seller rather than at the specification of the buyer. The Pennsylvania Supreme Court rejected this purported distinction as of no legal significance. The Court said:

> "Appellee seeks to distinguish these Class A transactions from the ruling in the *Keystone Metal Company* case by pointing out that here the buyer's specification was for coal to be obtained from an out-of-State mine, whereas in the *Keystone Metal Company* case the scrap copper might possibly have been obtained in Pennsylvania although in the particular instance it had to be procured elsewhere. But this difference would scarcely seem to be of significance from a legal standpoint because in both cases a physical transportation of the coal or the copper takes place across State lines and therefore interstate commerce is as much involved in the one instance as in the other. * * *" 381 Pa. at 542, 113 A. 2d at 722.

The refusal of the Pennsylvania Supreme Court to give any weight to this alleged distinction is supported by decisions of this Court: *Banker Bros. Co. v. Pennsylvania,* 222 U. S. 210 (1911); *McGoldrick v. Berwind-White Coal Mining Co.,* 309 U. S. 33 (1940). In both of these cases it was an essential part of the sales transaction which was taxed that the goods sold would be supplied from an out-of-State source.

It is interesting to note that in the *Berwind-White* case the tax was challenged on the basis of the same

"unique coal" doctrine asserted by petitioner. The taxable transaction in that case related to a sale of coal in New York City, and it was an essential part of the transaction that the coal sold must be coal produced in Pennsylvania. In discussing the purported distinction between contracts which contemplate or require interstate shipment and those which do not, Chief Justice Stone said:

> "But we think this distinction is without the support of reason or authority." 309 U. S. at 54.

Stripped of any distinguishing features, the Class A, B and D transactions clearly come within the decision of the Pennsylvania Supreme Court in the *Keystone Metal Company* case, and we submit that this Court should deny certiorari to the present petitioner as was done in the *Keystone* case.

B. *Sales transactions involving non-Pennsylvania buyers are taxable where delivery is made in Pennsylvania.*

The other three classes of transactions in issue in this Petition relate to sales made by petitioner, a Pittsburgh seller, to out-of-State buyers where delivery is made in Pennsylvania at the request of the buyer.

Class C transactions consists of sales of coal by petitioner to the Baltimore and Ohio Railroad Company, which has its main office in Maryland. The coal is purchased by petitioner from out-of-State mines specified by the buyer and is delivered to the buyer in Pennsylvania.

Class E transactions consist of sales of coal by petitioner to the Weirton Steel Company, a West Vir-

ginia corporation. The coal is purchased by petitioner from out-of-State mines specified by the buyer and delivered by barges to a point within Pennsylvania designated by the buyer. The buyer subsequently ships the coal to West Virginia.

Class F transactions also consist of sales of coal to the Weirton Steel Company. The coal purchased by petitioner is mined in Pennsylvania and is delivered by truck to a point within Pennsylvania designated by the buyer. The coal is loaded on barges and subsequently shipped by the buyer to West Virginia.

Petitioner has laid great stress upon the fact that the negotiations for these three classes of sales are carried on outside of the State. It should be pointed out, however, that the orders are accepted at the petitioner's office in Pittsburgh so that the sales are consummated and the contracts executed in Pennsylvania, and petitioner has not contended or shown otherwise. This Court has held in a number of cases that out-of-state solicitation and interstate negotiations do not in themselves control the validity of taxes of this nature: *Department of Treasury v. Ingram-Richardson Manufacturing Co.,* 313 U. S. 252, 254 (1941); *Western Live Stock v. Bureau of Revenue,* 303 U. S. 250, 253 (1938); *Compania General v. Collector of Internal Revenue,* 279 U. S. 306 (1929).

The Supreme Court of Pennsylvania upheld the validity of respondents' taxes with respect to Class C transactions, stating:

> "* * * The coal in these transactions is delivered to the buyer in Pennsylvania, and such a

delivery has been held in certain cases to constitute in itself an adequate taxable event: *Department of Treasury of Indiana v. Wood Preserving Corporation,* 313 U. S. 62, 67, 68; *International Harvester Co. v. Department of Treasury,* 322 U. S. 340, 345. * * *" 381 Pa. at 543-544, 113 A. 2d at 723.

Petitioner contends that Class E and F transactions should not be taxable because the coal delivered in Pennsylvania to the out-of-State buyer is subsequently transported by the buyer to West Virginia and the ultimate out-of-State destination is known at the time of the delivery in Pennsylvania. In answer to this argument the Pennsylvania Supreme Court said:

"* * * It would seem, therefore, that dominion over the shipment is transferred from the appellee to the buyer at Isabella [Pennsylvania] and, that being so, the transaction is one where, in addition to the fact that the final contracts of sale are made in Pennsylvania, delivery is also made within that State. Under such circumstances it is clear that these transactions also are subject to the mercantile license taxes. It is argued by appellee that the only reason for the buyer's accepting delivery at Isabella is that, before that point is reached, the barges cannot be completely loaded because of the shallower draft of the river. But the reason for making the delivery at that point is immaterial; it is the fact of the delivery there that is controlling. Nor does it matter in this connection that appellee knows that interstate transportation of the coal is contemplated and will occur after the barges leave Isabella: *Chassaniol v. City*

of Greenwood, 291 U. S. 584; *Department of Treasury of Indiana v. Wood Preserving Corporation,* 313 U. S. 62; *International Harvester Company v. Department of Treasury,* 322 U. S. 340, 345; *Interstate Oil Pipe Line Co. v. Stone,* 337 U. S. 662." 381 Pa. at 545, 113 A. 2d at 723.

It can be readily seen that the taxability of Class C, E and F transactions are supported by a long line of decisions of this Court. We respectfully submit, therefore, that there is no new or exceptional constitutional question involved in these transactions, and that, therefore, the Petition should be denied.

IV. Respondents' Taxes Are Supportable on the Basis of the Multiple-Burden Theory Which, Contrary to the Assertion of Petitioner, Has Not Been Abandoned By This Court.

Petitioner devotes part of its Argument to the assertion that respondents' taxes are constitutionally vulnerable because interstate shipment is involved. This position is predicated upon petitioner's contention that *Freeman v. Hewit,* 329 U. S. 249 (1946), abolished the so-called multiple-burden theory enunciated by Chief Justice Stone in *Western Live Stock v. Bureau of Revenue,* supra. The Pennsylvania Supreme Court grounded its decision in this case and in the prior *Keystone Metal Company* case in part upon the fact that even though interstate shipment was involved, no other state had the power to impose a tax on the transactions taxed by respondents. Neither the state of the supplier where the goods are obtained from out-of-State sources, nor the state of delivery where the goods are delivered out-

side of Pennsylvania at the request of the buyer, has the power to impose a tax upon petitioner for the privilege of carrying on its business in the City of Pittsburgh. Respondents cannot believe that this Court abandoned the multiple-burden theory in *Freeman v. Hewit,* when the rationale of that doctrine has been applied in a number of later cases, including *Central Greyhound Lines v. Mealey,* 334 U. S. 653, 662 (1948), *Interstate Oil Pipe Line Co. v. Stone,* 337 U. S. 662 (1949), and *Michigan-Wisconsin Pipe Line Co. v. Calvert,* 347 U. S. 157, 170 (1954).

Even before the multiple-burden theory was fully developed in 1938, this Court had upheld state taxes on separable local incidents or activities which at some stage of the entire transaction involved interstate shipment of goods: *Chassaniol v. City of Greenwood,* 291 U. S. 584 (1934); *Wiloil Corporation v. Pennsylvania,* 294 U. S. 169 (1935).

Respondents believe that the reasoning behind the so-called multiple-burden test is still effective to support local taxation against the challenge of the Federal commerce clause. We respectfully submit that *Freeman v. Hewit* has not caused any startling shift in the law in this field to support the allowance of a Petition for Certiorari in this case.

V. Conclusion.

The two major classifications of transactions involved in this case are:

1. Sales transactions between a Pittsburgh seller and Pennsylvania buyers, where the goods sold are acquired from out-of-State sources and/or delivered to the buyers' customers outside of the State (Classes A, B and D).

2. Sales transactions between a Pittsburgh seller and out-of-State buyers, where the goods sold are delivered to the buyers in Pennsylvania (Classes C, E and F).

The legal issues inherent in these transactions have been before this Court in a number of cases. The decision of the Supreme Court of Pennsylvania in this case is in accord with the prior applicable decisions of this Court.

With respect to the first major classification described above, this Court has upheld local taxes measured by gross receipts where there are adequate local incidents or events to support local taxation: *Western Live Stock v. Bureau of Revenue,* supra; *Wisconsin v. J. C. Penney,* 311 U. S. 435 (1940). The fact that the goods sold are supplied from sources outside the taxing jurisdiction has never been held to be a bar to local taxation: *Wiloil Corporation v. Pennsylvania,* 294 U. S. 169 (1935); *McGoldrick v. Berwind-White Coal Mining Co.,* supra. The fact that delivery is in some cases made outside the State at the request of the Pennsylvania buyers does not preclude taxation since all of the other incidents of the transactions occur in Pennsylvania. In

holding that out-of-State delivery does not free a sales transaction of this nature from local taxation, the Pennsylvania Supreme Court said in the *Keystone Metal Company* case:

> "* * * Had the delivery been made to the buyers in Pennsylvania and the goods then transhipped to the smelting plant, there would be no question but that the transactions were subject to the tax, and the mere fact that a short-cut was adopted by which shipment was made direct to the New Jersey refinery cannot relieve Keystone of its duty to 'pay its way' for the privilege of doing business in Pittsburgh. * * *" 374 Pa. at 330, 97 A. 2d at 800.

With respect to the second major classification of transactions, the fact that the petitioner, a Pennsylvania corporation having its main office in the City of Pittsburgh, carries on its selling activities within the taxing jurisdiction and the fact that delivery of the goods sold is made to the out-of-State buyers in Pennsylvania, are sufficient to support the local taxes.

Petitioner has neither averred nor shown that the questions involved herein are substantive questions which have not heretofore been decided by this Court. Neither has petitioner indicated any exceptional circumstances held requisite by decisions of this Court for granting writs of certiorari.

The taxes herein involved have been ruled to be valid local taxes which:

1. Do not discriminate against either intrastate or interstate commerce and are, therefore, not direct taxes upon interstate commerce; and,

2. Cannot be duplicated by any other taxing jurisdiction; and,

3. In this case present sufficient local incidents to support the tax levy of which petitioner complains.

Respondents respectfully submit that petitioner has presented no sound or conclusive reason why this Court should grant the writ of certiorari. No special or compelling grounds have been shown for this Court to deviate from its rule of exercising its discretion to grant writs of certiorari sparingly. The questions raised in this Petition have been decided by this Court in numerous instances, so that the law controlling the issues raised in the Petition is well established. Since the law so established is adverse to petitioner, respondents urge that the Petition be denied forthwith.

Respectfully submitted,

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PETITION OF THE WIEMAN AND WARD COMPANY FOR REHEARING OF ORDER DENYING WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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PETITION OF THE WIEMAN AND WARD COMPANY FOR REHEARING OF ORDER DENYING WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, THE WIEMAN AND WARD COMPANY, respectfully prays for a rehearing of the order issued on October 10, 1955, which denied The Wieman and Ward Company's Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania.

Question Presented

Should the City of Pittsburgh and School District of Pittsburgh be permitted to levy mercantile taxes measured by gross receipts of sales by a Pittsburgh dealer to (1) Pennsylvania companies who specify out of state goods for delivery directly to third parties out of state, the goods never entering Pennsylvania; (2) Pennsylvania companies who specify delivery of Pennsylvania goods to third parties out of state; particularly when other states prohibit similar taxes because the transactions are considered to be in interstate commerce and thereby exempt?

Grounds for Rehearing

I.

The questions raised by this case are of importance to the entire nation and not just to your petitioner. Your petitioner believes that the attention of this Court should be directed to the conflict between the cases and regulations of other states and the decision of the Pennsylvania Supreme Court in the case at bar. These cases and regulations have not previously been brought before this Court by the petitioner.

There are six types of transactions involved in this case; however, only two types—Class A and Class B —will be discussed in this petition. Your petitioner believes that the decision of the Pennsylvania Supreme Court in these two transactions is in conflict with the applicable decisions of this Court and is in direct conflict with the law and regulations of other states, as hereinafter set forth.

Class A transactions consist of sales by petitioner of coal or coke from out of state mines and ovens to Pennsylvania purchasers for delivery directly to third parties out of state. The coal or coke never enters the State of Pennsylvania.

Class B transactions consist of sales by petitioner of coal or coke from Pennsylvania mines and ovens to Pennsylvania purchasers but delivered directly to third parties out of state. There is no delivery in Pennsylvania.

In *Gross Income Tax Division of the State of Indiana v. L. S. Ayres and Company,* 118 NE 2d 480 (1954), the Supreme Court of Indiana held that sales by an Indiana department store to Indiana purchasers, who directed that the goods be delivered to third persons out of state, were not taxable under the Indiana gross receipts tax because they were sales in interstate commerce and thereby protected from taxation by the commerce clause of the United States Constitution: U.S. Const., Art. I., Sec. 8, Cl. 3. That case was never brought before this Court for review.

Petitioner submits that there is no difference between the transactions in the *Ayres* case and the Class B transactions of petitioner. Petitioner believes that this Court should determine the taxability of petitioner's transactions in order to, among other things, resolve the confusion surrounding this constitutional question as illustrated by the conflict between this case, as decided by the Supreme Court of Pennsylvania, and the *Ayres* case, as decided by the Supreme Court of Indiana.

II.

At least nineteen states in connection with sales, use and gross receipts taxes have regulations which exempt the proceeds of sales made in the taxing jurisdiction where, as a part of the contract, the seller is required to deliver the goods out of state. These sales are exempt because the states consider the sales to be in interstate commerce. The following states have regulations of this type which may be found in C.C.H. All-State Sales Tax Reporter:

Alabama, Rule I 14-012-014; CCH Ala. § 20-782-784.
California, Ruling No. 2015(C); CCH Calif. § 24-580.
Colorado, Rule No. 45 (B); CCH Colo. § 26-546.
Dist. of Col., Reg. Sec. 401(1); CCH D.C. § 29-508.
Florida, Rule 64; CCH Fla. § 30-564.
Illinois, Art. 5, II 2; CCH Ill. § 34-507.
Iowa, Rule No. 180, 2; CCH Ia. § 36-779.
Kansas, Reg. 94-6-8-C-1; CCH Kan. § 37-522.
Louisiana, Art. 2-29, 5; CCH La. §39-529.
Maryland, Rule No. 64; CCH Md. § 42-567.
Michigan, Rule No. 41; CCH Mich. § 44-641.
Missouri, Reg. N(e); CCH Mo. § 47-614.
North Dakota, Rule 37; CCH N.D. § 537.
Ohio, Rule 139; CCH Ohio §60-642.
Rhode Island, Reg. 6/30/47; CCH R. I. § 66-537.
South Carolina, Reg. 33; CCH S.C. §67-533.
South Dakota, Reg. IV(1)(A)(b); CCH S.D. 68-504.
Utah, Reg. 44; CCH Utah 71-544.
Washington, Rule 193; CCH Wash. § 74-593.

In these states it is clear that where the seller is obligated by the sales contract to deliver the goods out

of state, the proceeds are exempt from taxation. The law of Pennsylvania, as determined by the Supreme Court of Pennsylvania in the case at bar, is in conflict with all the above states. The Pennsylvania Court relies only on the contract having been executed in Pittsburgh and designates that execution as the taxable incident even though delivery is made out of state. In light of the conflict between Pennsylvania and the other states, petitioner submits that this Court should determine whether Pennsylvania is correct or incorrect in permitting the taxation of sales where goods, by contract, are delivered out of state.

Conclusion

Petitioner respectfully prays that this Court grant this Petition for rehearing and direct a Writ of Certiorari in this case so that it may decide the important questions involved and thereby clarify the law with respect to the imposition of gross receipts taxes on sales made in interstate commerce. This question affects the status of sales in Pennsylvania and elsewhere and therefore merits this Court's consideration.

Respectfully submitted,

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CERTIFICATE OF COUNSEL PURSUANT TO RULE 58(2)

Counsel for the petitioner hereby certify that this Petition is presented in good faith and not for delay and that it is restricted to the grounds available to petitioner and not previously presented.

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